

Please add new claim 13 as follows:

- Sub (2) 13. The fence of claim 12 wherein said complimentary parts of said fastener are slidably engageable in one direction for mechanically preventing disengagement in the opposite direction.

### REMARKS

This paper is responsive to the Non-Final Office Action dated November 20, 2002 with a shortened statutory period ending February 20, 2003. In the application claims 1-9 are pending and claims 1-9 have been rejected. Claims 10-12 have been added. Minor objections as to form of the specification and claim 1 were also made.

Examiner objected to the form of reference to provisional application from which this application claims priority. The first sentence of the application has been amended accordingly.

Examiner objected to the use of the word "compromising" in line 1 of claim 1. The word "compromising" has been amended to be "comprising".

The Examiner rejected claim 7 on the basis of insufficient antecedent basis for the limitation "said first mentioned [post]", and recommended appropriate language. The Examiner's recommendation being well taken, claims 3 and claim 7 have been amended as follows. In line 1 of claim 3 the phrase "a vertical post" has been amended to now read "a first vertical post". Claim 7 in line 2 the phrase "said first mentioned and second posts" has been changed to read "said first and second vertical post."

Examiner rejected claim 9 as being indefinite for insufficient antecedent basis for the limitation "said last mentioned space." The applicant respectfully disagrees with examiner that the phrase "said last mentioned space" is indefinite because the limitation refers to the space last mentioned which is in line 2 of claim 9 the phrase "each adjacent pair of ribs defining a space

there between.” Nevertheless, applicant has amended line 3 of claim 9 deleting the phrase “last mentioned” and adding the phrase “defined between said ribs” after the word “space”. Applicant respectfully urges that this is an equivalent phrase for the phrase originally claimed.

Examiner rejects claim 1 as being anticipated U.S. Patent 2,588,147 to Morris. Applicant respectfully traverses the rejection for the following reasons. Claim 1 recites the limitation “each of said parts including a cooperating fastener for securing the parts together about said boards”. The examiner points in Morris to fasteners 13 and 20 as reading upon this claim limitation. Applicant respectfully argues, however, that Morris fasteners 13 and 20 are not “a cooperating fastener” because they do not cooperate with each other and are two distinct fasteners. Fasteners 13 of Morris are not parts of the rail as required in claim 1 and are fastened to post 10 but do not cooperate with each other as further required by claim 1. Pins 20 engage only one side of the rail and the upright member. They are used to secure the upright members, not connect any rail parts (column 2, lines 20-22). Therefore, Morris does not anticipate nor render obvious claim 1 because it does not include a cooperating fastener on each of said parts for the parts together about said boards which facilitates assembly.

The examiner has rejected claims 2-6 as also being anticipated by Morris. Applicant respectfully traverses the rejection pointing out that claims 2-6 being dependant from claim 1 and claim 1 being not anticipated by Morris as pointed out above, claims 2-6 are not anticipated by Morris either.

Additionally as to claim 5 Examiner asserts that Morris anticipates the limitation “each post fits between said parts of each of said rails.” In support of this assertion the examiner states that in Morris the posts fit between the parts “in the sense that there are parts on either side of the post 15 and “E” (?). Applicant respectfully traverses examiner's basis for rejection for the

following reason. In Morris the “parts on either side of the posts 15 and “E” (10?) are not “parts of each of said rails” as claimed in claim 5. Rather the rail parts referred to by examiner in Morris are parts of two different rails. Therefore because Morris does not disclose a fence wherein each post fits between said parts of each of said rails, claim 5 is not anticipated or rendered obvious by Morris.

Examiner rejected claims 7-9 as obvious with respect to Morris on the grounds that Morris teaches each of the limitations of claim 7 except a third horizontal rail, but that the third horizontal rail simply duplicates the other components of the Morris fence. Applicant respectfully traverses this rejection for the following reason. As discussed above with regard to claim 1 Morris does not disclose each of the parts of either of the rails as including cooperating fasteners for securing the rail parts together. Morris does not teach all the limitations of claims 7-9, and the third rail is not simply a duplication of a component of Morris. Therefore, applicant respectfully submits it would not have been obvious to one of ordinary skill in the art to locate a third horizontal rail above the upper horizontal rail, each of said rails engaging the first and second vertical posts and each of said parts of said third rail including cooperating fasteners for securing the parts together.

New claim 10 has been added to further distinguish from Morris in that Morris does not disclose posts fitting between opposing half parts of each rail.

New claim 11 is distinguishable from Morris in that Morris does not disclose a lower rail that carries the posts and the boards.

New claim 12 is further distinguishable from Morris in that Morris does not disclose opposing half rail parts each part including a complementary part of a cooperating fastener for securing the parts together about the boards.

New claim 13 which depends on new claim 12 further distinguishes the invention from Morris in that Morris does not disclose the complementary parts of the fastener to be slidably engageable in one direction for mechanically preventing disengagement in the opposite direction.

Each of Examiner's objections and rejections having been specifically responded to by Applicant, Applicant respectfully submits that the application as amended is in proper form for allowance. Therefore the Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

**VERSION WITH MARKINGS SHOWING CHANGES MADE**

**In the Specification:**

The paragraph beginning on page 1 at line 4 has been amended as follows:

This Application claims the benefit of U.S. [is a continuation of] Provisional Application [serial] number 60/260,051, filed January 5, 2001.

**In the Claims:**

Claim 1 has been amended as follows:

1. (Amended) A fence comprising [compromising] and upper horizontal rail, a lower horizontal rail, boards extending between said rails, at least one of said rails having separate half parts, each of said parts including a cooperating fastener for securing the parts together about said boards, at least one of said parts having longitudinally spaced ribs, each adjacent pair of ribs defining a space therebetween, and a said board fitted into a said space with said parts secured together about said boards.

Claim 3 has been amended as follows:

3. (Amended) the fence of claim 1 and a first vertical post extending transversely relative to said rails, said rails engaging said post.

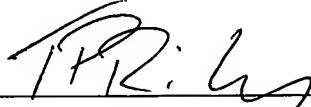
Claim 7 has been amended as follows:

7. (Amended) The fence of claim 4 and a third horizontal rail located above said upper horizontal rail, each of said rails engaging said first [mentioned] and second vertical posts.

Claim 9 has been amended as follows:


9 (Amended) The fence of claim 8 wherein at least one of said parts of said third rail includes longitudinally spaced ribs, each adjacent pair of ribs defining a space therebetween, a said board fitted into a said [last mentioned] space defined between said ribs.

Respectfully Submitted,

  
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